IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.09.2023

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.22279 of 2021 and
W.M.P.Nos.23496, 23497of 2021 and 1525 of 2022

M/s.Devendra Estates Private Limited,
Represented by its Director
Mr.S.Abhaya Kumar,
No.36, Prabhakara Apartments,
Melony Road, T.Nagar,
Chennai 600 017. ... Petitioner

v.

1.The Central Board of Direct Taxes,
Represented by is Chairperson,
Department of Revenue – Ministry of Finance,
Government of India,
New Delhi.

2.The Additional/Joint/Deputy/Assistant Commissioner
of Income Tax/Income Tax Officer,
National e-assessment Centre,
Delhi.

3.The Income Tax Officer,
Corporate Ward -1(4)
No.121, Mahatma Gandhi Road,
Nungambakkam, Chennai 34.

4.The Principal Commissioner of Income Tax,
No.121, Mahatma Gandhi Road,

Nungambakkam, Chennai 34.

5.Income Tax Appellate Tribunal, Chennai,
"B" Bench
A3, II Floor, Rajaji Bhavan,
Chennai 600 090. ... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorarified Mandamus calling for the records on the file of the 2nd respondent and quash the impugned order in ITBA/AST/S/143(3)/2021-22/1035788975(1) dated 22.09.2021 passed by the 2nd respondent as illegal and consequently direct the 2nd respondent to complete the fresh assessment for the assessment year 2015-16 after granting reasonable / sufficient opportunity of hearing and after passing of final order in ITA. No.175/CHNY/2020 by the Income Tax Appellate Tribunal "B" Bench.

For Petitioner : Mr.S.Goutham Venkatanarayanan for Mr.R.Sivaraman

For Respondents : Mr.D.Prabhu Mukunth Arunkumar for Mr.B.Ramanakumar

ORDER

The Writ Petition is filed challenging the order of assessment on the limited ground that it is being made in violation of principles of natural justice inasmuch the impugned order of assessment proceeds on the premise that the petitioner has not even responded to the show cause notice without considering the request for adjournment and the objection filed by the petitioner.

2. It is submitted by the learned counsel for the petitioner that the show cause notice dated 15.09.2021 was issued calling upon the petitioner to submit its objection on or before 20.09.2021. On 20.09.2021 the petitioner made a request to adjourn the matter to 22.09.2021. On 22.09.2021, a letter dated 20.09.2021, objecting to the proposed variations to be made by the 2nd respondent was uploaded by the petitioner. On 22.09.2021, the petitioner had also requested for grant of opportunity of being heard through video conference on Monday (27.09.2021) at 10:30 a.m. vide acknowledgment no. 553390241220921. The impugned order of assessment has been passed on the ground that the request for personal hearing through video conferencing has not been availed by the petitioner. It was submitted that the impugned order dated 22.09.2021 has been made in violation of principles of natural justice, for non-consideration of objection submitted on 22.09.2021 and request for adjournment to 27.09.2021.

3. To the contrary, it was submitted by the learned counsel for the respondents that no letter was received from the petitioner on 20.09.2021, seeking adjournment against the show cause notice dated 15.09.2021. The assessee in his letter dated 30.08.2021 requested for personal hearing in virtual mode to enable the petitioner to explain their case better, in order to extend the facility of video

conference, it was intimated in the show cause notice dated 15.09.2021 itself, to the assessee that the request can be made by clicking the "seek video conferencing" button available against the SCN. But the assessee failed to furnish any reply to the show cause notice dated 15.09.2021 and also failed to avail the personal hearing through video conferencing by not exercising the option given in the show cause notice. Further, it is submitted that the order r.w.s. 143(3) r.w.s 263 r.w.s 144b of Income Tax Act, 1961 dated 22.09.2021 was delivered to the petitioner on 22.09.2021, 07:03:54 p.m., as per the delivery status in the ITBA portal. It was submitted that the impugned order is made after granting adequate opportunity to the petitioner and thus the case of the petitioner that it is made in violation of principles of natural justice is devoid of merits.

4. On perusal of the record, this Court finds that a request was in fact made by the petitioner on 20.09.2021 to adjourn the matter to 22.09.2021 as evident from the screenshot of the web portal of the respondent department, however the same has not been considered / responded. Though the petitioner had submitted its objection on 22.09.2021 and a request was made to grant hearing through Video Conferencing on 27.09.2021, the impugned order has been passed on 22.09.2021 without considering the objection and request for personal hearing.

5. The impugned order is thus made on non-consideration of the request for adjournment and the objection. The impugned order thus suffers from violation of principles of natural justice. The impugned order is set aside and remanded back to the 2nd respondent for reconsideration after affording an reasonable opportunity of hearing to the petitioner and to re-do the assessment in accordance with law within a period of 6 months from the date of receipt of a copy of this order. In the event the respondents find that the objections dated 20.09.2021 and 22.09.2021 are not on record, the portal may be enabled to permit the petitioner to upload its objections and thereafter proceed to complete the assessment after granting reasonable opportunity of hearing to the petitioner in accordance with law. It is made clear that this Court has not expressed any view on merits .

6. With the above direction, the Writ Petition stands disposed of. No Costs. Consequently, connected miscellaneous petitions are closed.

05.09.2023

Index: Yes/No
Speaking order/ Non speaking order
Neutral Citation: Yes/No
shk

MOHAMMED SHAFFIQ, J.

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